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UNCLAS SECTION 01 OF 14 NEW DELHI 004667

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STATE FOR S/CT

E.O. 12958: N/A
TAGS: [PTER](#) [PGOV](#) [PREL](#) [PHUM](#) [KCRM](#) [IN](#)
SUBJECT: STAGED ENCOUNTERS A BLEMISH ON INDIAN CT, LAW
ENFORCEMENT

REF: A. NEW DELHI 4283
[1](#)B. NEW DELHI 3835
[1](#)C. NEW DELHI 2998
[1](#)D. 05 NEW DELHI 9485
[1](#)E. 05 NEW DELHI 4449

[1](#)1. (SBU) Summary: A review of Indian media would suggest that police, military and paramilitary officers have become expert at intercepting terrorists and at killing them in self-defense. Scratch the surface, however, and what lies underneath is an "encounter killing" -- an extrajudicial execution framed to look like the police foiled a bona fide terrorist attack. In some cases the victim is killed while in custody or after having been unofficially arrested, and brought to a (usually) isolated location where the officers later announce they had prevailed in a shoot-out with a hardened criminal or hard-core terrorist. India's slow legal system and the difficulty of obtaining timely convictions are key drivers in security officers deciding to summarily execute terrorist suspects, including in staged encounters, sources tell us. Police may also initially be driven to conduct these staged encounters because of the pressure to "solve the case," but they can be a lucrative business, the source of government-funded bounties, medals, and fame. In exceptional cases, police who become famous for multiple encounter killings become legend; Mumbai police officer Daya Nayak, who three years ago literally boasted having killed 83 criminals in encounters, was the subject of no less than three Bollywood films and a consultant on several more.

[1](#)2. (SBU) The problems of a law enforcement culture that

supports staged encounters are manifold: the unpunished (and often unpunishable) murder of civilians, trading good police work for an easy PR solution to a crime or terrorist attack, eroding public trust in the government, permitting corruption, promoting a culture that cheapens human life, and letting go unpunished those who actually committed heinous crimes and terrorist acts. Variants of this problem are found throughout most of India, each variant flavored by the region it inhabits. The good news is that the GOI has begun taking steps to bring to book officers who commit encounter killings; the less savory news is that the problem remains endemic, widespread, deeply ingrained in police culture, and still deemed by much of the public as an acceptable tactic to combat crime and terrorism. End Summary

13. (SBU) NOTE: For the sake of consistency in this report, "encounters" will refer to all violent clashes between police and suspected terrorists; "bona fide" will be used to describe encounters we believe were legitimate law enforcement operations; and "staged encounters" will refer to incidents where we are highly skeptical of the veracity of police reporting. South Asia Human Rights Documentation Centre Executive Director Ravi Nair told us that the terms "encounter killings" and "encounters" dates back to the 1960s, because police committing extrajudicial executions would claim they were killing criminals in an "encounter" with the police. The term has since become shorthand for any violent clash between security forces and criminals/terrorists, and security officials who become known for these operations are openly known and praised by the sobriquet "encounter specialists."

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14. (SBU) NOTE (CONTINUED): This cable seeks to assess certain human rights issues endemic among uniformed security forces. Without a doubt terrorists and criminals themselves also commit serious human rights violations, which are more commonly referred to as crimes, and which are well documented in both Embassy reporting and open media. The focus on human rights violations by government officers does not diminish the horrific violations conducted by terrorists against civilians; staged encounters, it should be noted, are also sometimes conducted against civilians. End Note.

The Dirty Little Secret Everybody Knows

15. (U) "Hindustan Times" editor Vir Sanghvi pulled no punches in his commentary entitled "Society's Willing Murderers." "Years ago, an encounter was when a police party confronted a criminal and fought a fight to the finish. Then, the definition changed -- an encounter became an occasion when the police captured a gangster and, instead of arresting him, shot him dead on the spot... Nearly every time I read about an encounter in Delhi, I am pretty sure that the suspects have been shot in cold blood." Sanghvi's concern, however, is not for the victims of wrongful encounters but "with the consequences of letting policemen become executioners" and the likelihood that extortion and corruption would follow.

Pressures on Police

16. (SBU) Indian police forces are getting better at conducting bona fide anti-terrorism operations, but they remain poorly staffed, educated, trained, equipped, and funded (Ref D). Corruption and inefficiency further rob police forces of much-needed resources in areas prone to terrorism (J&K, the North-East, and the Naxal belt) or violent organized crime (Mumbai). At the same time, public and political pressure on police to "arrest someone" mount after every spectacular terrorist attack. This conflict between capacity and needs starts the cycle of police frustration.

¶17. (SBU) Police frustration extends to the Indian legal system. The difficulty of obtaining timely convictions is a key driver in security officers deciding to summarily execute terrorist suspects, including in staged encounters, according to Delhi-based terrorism expert Ajai Sahni. Forensics is weak in India -- only two DNA labs service the entire country. Few police officers outside major cities are trained in safeguarding and exploiting physical evidence, including electronic data. Bringing 2.2 million police officers (with a combined \$5.5 billion budget) into 21st century law enforcement is proving to be a slow slog.

¶18. (SBU) As a consequence, terrorism and criminal investigations and court cases tend to rely disproportionately upon eyewitnesses (when available) and confessions, many of which are obtained under duress if not torture. Many cases that relied upon eyewitness testimony or confessions, for example those relating to the Punjab

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militancy of the 1980s-90s, are later dismissed or overturned when witnesses or defendants later recant their testimony. According to "Hindustan Times" editor Vir Sanghvi, "Cases take so long to come to trial that witnesses forget what they have seen and judgments are often irrelevant by the time they are delivered." In the case of Kulvir Singh Barapind -- a suspected Khalistani terrorist the USG recently extradited to India (Ref A and previous) -- the witnesses in several of the 1991-92 cases filed against him have since recanted their initial testimony, causing the state to withdraw some charges. It is difficult to determine if they recanted due to threats from Khalistani terrorists or that their original testimony was coerced by Punjab police. In other cases, Jaish-e-Mohammad leader Masood Azhar spent seven years in Indian jails before he was released to end the December 1999 hijacking of IC-814, with no convictions, and Mafia kingpin Babloo Srivastava has spent ten years in jail to date, again with no conviction.

¶19. (SBU) Some police officers, knowing this is their operating environment, choose to kill detained suspects they believe will eventually walk free if arrested. Probably more common -- although data is lacking to confirm this -- would be police keeping criminal and terrorist suspects in jail without charges. These detainees could then be used to "solve" future terrorism cases, by killing them and staging their bodies to appear as terrorists killed in a gunfight. At the street level there is no dearth of anonymous young men whose families, if they have families, lack the clout to pierce the police veil to even discover the men have been jailed; they would also lack the clout to discover where they are held and under what charges, or how to get them released. These people live on the margins of society, illiterate, not missed when they are picked up by the police, and not identified if their bodies turn up as "terrorists" killed in a staged encounter.

Frustration Plus Reward Yields Temptation

¶10. (SBU) It is easy for police officers to justify staged encounters as just one more government tool in their fight against crime and terrorism. Mumbai Police Inspector Raju Pillai -- who was awarded the President's Medal for Meritorious Service (2006) -- had worked in encounters, including staged encounters, since the 1980s, and now wants to be known "as a policeman, not as an encounter specialist." He quietly defended his methods to journalists: "in (the 1980s) encounters were the need of the hour, gang war was spilling onto the streets, even the Crime Branch was reeling under threat from the crime lords. Our brief was clear: to wipe out crime." However, Pillai admits that many police applicants today are lured by the potential to make money -- through corruption, power brokering, and in some cases as hired guns. Much as Mullah Omar began his rise in the

Taliban by executing summary justice to an alleged rapist, Punjabi encounter specialists acquired the veneer of the Old West sheriff hired to clean up a town.

Political, Legal Cover for Encounter Specialists

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¶11. (SBU) As officers "specialize" in staged encounters, their positive press and public approval mutually reinforce; they also accrue medals for valor, bonuses, promotions, and other tangible benefits. Another bonus encounter specialists enjoy is impunity. Decorated encounter specialists consider themselves "above the law" because their scoresheet against terrorism protects them from negative fallout. Because these crimes (i.e. trying staged encounters as criminal murders) are enforced at the state level, local public opinion generally weighs heavily in favor of the encounter specialists.

¶12. (SBU) Domestic legislation effectively immunizes the police and military from the legal prohibitions against torture:

-- According to Section 197(2) of the Indian Penal Code, "No Court shall take cognizance of any offense alleged to have been committed by any member of the Armed Forces ... while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

-- This is reinforced by Section 6 of the Armed Forces Special Powers Act (1958) (AFSPA) which states that "no prosecution, suit, or other legal proceedings shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act." The AFSPA is operative in J&K and several Northeast states. Section 4 of the AFSPA permits security forces stationed in these government-designated "disturbed areas" to shoot persons if "necessary for maintenance of law and order," although the officer is encumbered to provide "such due warning as he may consider necessary."

-- The 1973 Code of Criminal Procedure extends this umbrella to government civil servants as well as members of police and military forces.

¶13. (SBU) Even if the government were to crack down on staged encounters, the same slow bureaucracy and courts that lead to encounters also protect encounter specialists. According to the Asian Centre for Human Rights' "India Human Rights Report 2005," (IHRR) only a minuscule percentage of encounter killings result in a trial, let alone a conviction. Some trials of security officers for alleged staged encounters in J&K and Punjab have lingered for over a decade.

Hard for the Government to Address the Problem

¶14. (SBU) The pressures on police are real -- in 2005 in Bihar alone (a state admittedly known for its lawlessness), 300 left-wing extremists burned down a police station in one village, another town was sacked and hundreds of prisoners freed, and a police training center was ransacked and nearly 200 firearms were seized, all by Naxalite terrorists. Across India, political leaders select senior police officers in a jurisdiction with more attention to loyalty than to professionalism. This leaves the police chiefs with little say in selecting their subordinates in what is informally

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known as the "transfer industry," the process of officers

"buying" postings where they can profit as extortionists or hired guns, Deputy Inspector General of Police Gonda (Uttar Pradesh) Safi Ahsan Rizvi told journalists. In fact, some postings are so expensive to purchase, the officer must immediately embark on securing bribes and murder contracts to start paying back the loans he procured to obtain the position in the first place.

¶15. (SBU) Some social activists take their accusations a step further. Former IAS officer SR Sankaran, now affiliated with the NGO Peoples' Union for Civil Liberties, called staged encounter killings a "deliberate and conscious state administrative practice." (NOTE: Sankaran is also reportedly well regarded by Naxal groups. End Note.) Human rights advocate Ravi Nair cuts to the chase: "Extrajudicial killings are de facto state policy in India."

Public Acquiescence

¶16. (SBU) This same frustration that leads police to summarily execute terrorists also leads much of the Indian populace to willfully cast a blind eye to the problem. Public frustration with the courts' inability to swiftly apply justice in terrorism cases has bred a climate that tacitly sanctions staged encounters, as long as civilians are not harmed and the police only target two-bit criminals, terrorist foot-soldiers, and slum-dwellers.

Encounter Culture Taints Media Reports

¶17. (SBU) There is no widely accepted data on the magnitude of the problem of extrajudicial killings, let alone the subset that can be categorized as staged encounters, although the number of such deaths is believed to have declined sharply in recent years following criticism from Indian courts and the National Human Rights Commission. The persistence of staged encounters, however, casts doubt on the legitimacy of many untelevised/unwitnessed reports of police shoot-outs.

Elements of an Encounter

¶18. (SBU) Although it is difficult to determine with finality which incidents are staged encounters and which are bona fide, some details of police incidents we see in the Indian media are sufficient to raise suspicions:

-- We believe staged encounters are more likely to transpire without civilian witnesses present. We give far more credence to the veracity of terrorists being shot by police during a attack witnessed by civilians or the media, such as the December 2001 attack on Parliament, than to shoot-outs that occur away from the public eye, either in isolated rural areas or (for urban encounters) ones that occur in the hours before dawn, when few civilians are on the street.

-- We give more credence to attacks that result in terrorists being arrested and later being presented in court, such as

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the arrests following the May 2005 Delhi cinema blasts. Staged encounters are more likely to end with the terrorists, who are often reported as carrying automatic weapons and explosives, all dead, and without having wounded any security officers.

-- In many arrests and shoot-outs, the names of the terrorists are released to the media. In some incidents that have the above hallmarks of encounters, however, names are either withheld or only partially released -- either first names only, such as "Aziz" or "Mahmud," or noms de guerre such as "Abu Hamza." Ajai Sahni pointed out to Poloff that his database (www.satp.org) lists no fewer than six dead to

the six "Abu Hamzas" and at least one living who is sought by Mumbai police.

-- We also believe, but are unable to fully corroborate, that the incidence of staged and/or bona fide encounters spikes for several weeks immediately after a terrorist attack (see Paras 29-30). This is a logical assumption, because both vigilance and the pressure to "do something" rise immediately after a terrorist attack, and taper off afterwards.

¶19. (SBU) Encounters can also be categorized according to who the "terrorist" is:

-- In bona fide encounters, as well as in some staged encounters, the identity of the terrorist is exactly who the police say he is -- the perpetrator or planner of a particular attack, or a leader of a known terrorist organization. The difference here is, the bona fide encounter occurs while the police are trying to arrest/subdue the suspect (in a hot-pursuit style engagement), while the staged encounter occurs after the police decide to execute the already-arrested/subdued terrorist.

-- On the other extreme, in some staged encounters, the "terrorist" turns out to be a "chawl" (slum)-dweller or a migrant laborer, living on the margins of society whose disappearance is not noticed, able to disappear -- or "be disappeared" -- without causing a stir.

-- According to Sahni, the vast majority of encounter cases lie in the middle: petty thieves and low-level terrorist operatives who, in his words, "did not commit the crimes the police say they did, and certainly are not planners, but are guilty of some other crimes and are often taken from jail cells or known hide-outs, roughed up or shot, and then planted and positioned for effect."

Early Encounter Inquiries Slammed AP, Punjab Police

¶20. (SBU) Early investigations into alleged staged encounters yielded high conviction rates against police. Nineteen encounters in Andhra Pradesh in 1975-6 investigated by the Tarkunde Inquiry and eight in 1970-6 investigated by the Punjab Civil Rights Committee were all staged, according to the committees, who also noted the lack of official inquiries into any of the encounters and the refusal of requests made by the victims' families to the state and federal governments to investigate the incidents.

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Punjab Credited for Expansion of Encounters

¶21. (SBU) Some Indian terrorism analysts trace the rapid expansion of encounters -- both bona fide and staged -- to Punjab in the late 1980s. The Punjab militancy was the epicenter of violence, and Kashmiri terror was just over the horizon. Vir Sanghvi in early 2006 recounted the "open secret" that Punjab Police chief KPS Gill "ended the Punjab

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militancy by simply executing the terrorists they came across"; Gill justified his actions by averring that no judges could try the terrorists, nor could any witness testify or any court convict them, because the police could not adequately protect the rest of the legal system from terrorists' retribution. (NOTE: Gill currently heads Chhattisgarh state's anti-Naxal efforts. He is also the President of the Institute for Conflict Management; Ajai Sahni, one of our most reliable counter-terrorism contacts, is the ICM's Executive Director. End Note.)

¶22. (SBU) During the Punjab militancy of the 1980s-1990s, Additional Director General of Police (Administration)

Mohammad Izhar Alam assembled a large, personal paramilitary force of approximately 150 men known as the "Black Cats" or "Alam Sena" ("Alam's Army") that included cashiered police officers and rehabilitated Sikh terrorists. The group had reach throughout the Punjab and is alleged to have had carte blanche in carrying out possibly thousands of staged encounters, according to Indian NGO and press reports. Gill publicly praised the group and said the Punjab police could not have functioned without them.

Punjabi Encounters Now Rare, but After-Effects Linger

¶23. (SBU) On the positive side, our Punjabi contacts and a review of Indian media reports suggest that staged encounters in Punjab are largely a thing of the past. As the State Department's 2004 Human Rights Report (HRR) notes, "the pattern of torture and extrajudicial killings (in Punjab) prevalent in the 1990s has ended." In the months following the May 2005 Delhi cinema bombings, several suspects were arrested; none were shot down (Ref E). Punjabi encounter killings did leave behind a legacy, however -- the 2004 HRR also notes that "the government has failed to hold accountable hundreds of police and security officials for serious human rights abuses (committed from 1984-95)," including staged encounters. (NOTE: The California-based NGO ENSAAF estimates that Indian security forces extrajudicially killed and "disappeared" over 10,000 Punjabi Sikhs in counter-insurgency operations during the militancy. End Note.)

¶24. (SBU) The lingering social and law enforcement problems in Punjab were recorded by the Bellevue-NYU Program for Survivors of Torture and Physicians for Human Rights in a 2005 joint survey of Amritsar-based family members of 160 victims who were extrajudicially killed. The study's focus was on how encounter and custodial killings affected the family members, but it also yielded interesting results about the encounters as well. Only half of the family members

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asked police for the circumstances of death; of these, police told approximately 65% the deceased had been killed in an encounter. The encounters were sometimes described as either crossfire with terrorists or escape attempts, but in many cases no specifics were offered.

¶25. (SBU) The Bellevue-NYU study also reported an understandable strain on civil-police relations. One 70-year old father recounted that when the police offered monetary compensation, he instead offered to give them money, "but first let me kill your son." In addition to a host of psychological traumas uncovered, many of those interviewed reported having been abused or tortured by security forces themselves, and one-third of the family members reported they had also received death threats from the security forces.

Kashmir: The New Punjab

¶26. (SBU) When Kashmir took the mantle of "hotbed of terrorism" from Punjab, it also began to assume a greater share of likely staged encounters. In some cases of security forces killing civilians and subsequently claiming to have killed terrorists, we can assume the high operational tempo led to accidental deaths that the security officers staged after the fact, to cover up mistakes. In some cases, however, the staged encounters were clearly premeditated. For staged encounters in J&K that have subsequently been investigated and charges levied against the perpetrators, see Paras 48-50.

¶27. (SBU) PM Singh and J&K Chief Minister Ghulam Nabi Azad (as well as Azad's predecessor Mufti Mohammed Sayeed) each announced "zero tolerance" policies toward staged encounters when they took office. However, human rights advocate Ravi

Nair predicted that, until the Armed Forces Special Powers Act and the J&K Public Safety Act are withdrawn, security forces will continue to commit custodial killings, because these laws provide immunity to those who commit abuses. The use of soldiers and paramilitary forces in the Valley, notably the Rashtriya Rifles, results in many of those who commit custodial killings falling outside the purview of the PM's edict, Nair concluded.

¶28. (U) According to a May 2006 "Asian Age" article, Army Captain Sumit Kohli of the 18th Rashtriya Rifles had witnessed an April 2004 encounter killing of four porters by Army officers who later claimed the porters were "Pakistani jihadi terrorists." This information reportedly remained under wraps until a June 2005 anonymous letter to the wife of one of the porters claimed the encounter had been staged. In April 2006 Kohli ostensibly committed suicide by shooting himself in the neck with an AK-47. Kohli's wife told reporters Kohli had been shot seven times by another Army officer because Kohli had threatened to cooperate with the Army's investigation of the encounter; she also believed Kohli has written the anonymous letter. An Army spokesman said both the encounter and the purported suicide are still under investigation.

Tit-for-Tat Killings in Naxal Belt

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¶29. (SBU) The wealth of press reporting on encounter killings in the Naxal Belt (Andhra Pradesh, Bihar, Chhattisgarh, Himachal Pradesh, Jharkand, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Tamil Nadu, Uttar Pradesh, and West Bengal) compared to that of other parts of India suggests it is particularly prone to such incidents. We cannot authoritatively determine, however, whether this is related to the rate of encounters or the aggressiveness of reporting. Also, because the Naxal belt spans 12 states, and crime is a state-level issue, statistics on Naxal-related encounters overall are particularly difficult to collect.

¶30. (SBU) Consulate/Chennai's analysis of terrorist violence for 2005 yields an extraordinary and predictable pattern; within 1-4 days of a Naxal murder of a police officer or civilian, there is almost always a killing of one or more Naxalites by police, usually in encounters. The numbers generally favor the police forces; for example, according to Andhra Pradesh government figures, police killed 161 "extremists" against 25 police officers killed.

Manipur and Assam: Encounters in the Northeast

¶31. (SBU) Most encounters in the Northeast occur in the state of Manipur, where they are "pretty common," if not widely reported, according to Consulate/Calcutta. For example, in the spring-summer of 2004, 60 civilians were killed in encounters over a three-month period. Because of the region's hard physical isolation from the rest of the country, much of this activity escapes the notice of the national press. The "Indian Human Rights Report" catalogues seventeen cases in 2004 of what Manipuri villages claimed were staged encounters, most involving units of the Assam Rifles. According to the families of the victims, in almost all these cases the victims were arrested from their homes and later "killed" by paramilitaries who claimed they were armed, frequently with 9mm pistols. Although reporting from victims' families is not conclusive, elements of a trend are concerning.

¶32. (SBU) To a lesser extent, Assam has also seen encounters. However, the main terrorist group, the United Liberation Front of Assam (ULFA, designated as an Other Specified Terrorist Organization) has been in a prolonged negotiation process. ULFA attacks are generally planned to

keep casualties low -- they seem to prefer causing disruption at Indian national events and attacking economic targets -- which makes their cadres less likely targets for staged encounters.

¶33. (SBU) That said, a February 2006 alleged encounter by paramilitary forces in Assam was swiftly followed by violent protest. General Officer Commanding Eastern Command Lieutenant General Arvind Sharma swiftly announced an inquiry, visited the victim's family to give 100,000 rupees compensation, and declared the Army would build a house for his family, provide a job for his wife, and assist the rearing of his two children. (NOTE: 100,000 rupees is roughly equal to \$2200, a considerable sum in rural India. End Note.) Before Lt. Gen. Sharma's visit, however, a crowd

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of over 15,000 people for four days blocked the road that connects Assam to Arunachal Pradesh and burnt vehicles, a post office, and a train station. Police defending their headquarters in Kakopathar opened fire on the mob, killing seven, while the enraged throng killed two security officers and seized their AK-47s.

Capital Encounters Seldom Reported; Uptick Recent

¶34. (SBU) Reports of encounters in New Delhi are infrequent -- less than once per year until the two incidents reported in the first half of 2005, both involving Special Cell units killing suspected Lashkar-e-Tayyiba members, according to www.satp.org. Both times, the encounters happened near arms caches that included assault rifles and explosives. We cannot say whether this is a function of the number of actual encounters or of the ability/willingness of reporters to cover the subject, although both Ajai Sahni and Vir Sanghvi say that encounters in Delhi are more frequent than Indian press reporting suggests. In the cases above and the handful of others reported since 2000, police reported that the terrorist suspects carried or were near firearms, but in none of the incidents were any police reported slain or injured. In the November 2002 Ansal Plaza incident, the Delhi Police claimed they intercepted a plot to bomb a shopping mall; "Hindustan Times" reports say the police "took two drugged terrorist suspects to the Ansal Plaza basement and shot them in cold blood."

¶35. (U) Police in early March reported a 6am encounter that left dead two suspected Lashkar-e-Tayyiba terrorists in northwest Delhi, claiming the duo were behind the October bomb attack on the Hyderabad police office. The Hyderabad-based Civil Liberties Monitoring Committee called the encounter "fake," primarily because (1) no police were injured despite the terrorists possessing an AK-56, pistols, and hand grenades, and (2) the police released detailed histories of the terrorists shortly after the encounter.

¶36. (U) More recently, Delhi Police say they killed a suspected Lashkar-e-Tayyiba terrorist near Nehru Stadium on May 8 at 10pm, although media reports are consistent with the profile of a staged encounter: lack of civilian witnesses, lack of police casualties in Delhi after the "LeT" terrorist reportedly opened fire first, only a nom de guerre given to the press by the police (Abu Hamza, see Para 18), etc. Police told reporters they shot Abu Hamza after he opened fire; no police casualties were listed.

Mumbai Encounters Declining, Crooks Still Targeted

¶37. (SBU) The same frustrations that bedevil police trying to combat terrorists also stymie those who face criminals; in some cases criminal police have it harder, because anti-terrorism units typically benefit from better equipment and training, and in some states special anti-terrorism laws give the police additional legal tools. However, police in

regions where organized crime holds sway, as in Mumbai, stand to profit handsomely by taking contracts from one criminal gang to kill members of a rival. The criminals know their

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hired gun will do the job well and is immune from prosecution; the officer earns cash and favors from the criminals, and sometimes a commendation from the government, as well as the verbal support from the public for helping to clean up crime.

¶38. (SBU) Reported encounter deaths in Mumbai peaked in 2001 at 94, and declined to 11 for 2004 (most recent figures available through "Times of India" reporting.) Consulate/Mumbai reports that Police Commissioners Anami Roy (Mumbai) and Shivanandan (Thane) made a policy decision to rein in encounter killings in 2004 -- which saw a dramatic drop from 35 encounters the prior year -- in large part because several police officers were visibly enriching themselves by using encounters for extortion. Also, several police officers were charged with murder in September 2004 following the suspicious disappearance (and suspected torture-killing) of one of the accused in the 2003 Ghatkopar bombing case. As a result, the small teams of "encounter specialists" were reportedly disbanded and their officers distributed to other branches.

¶39. (SBU) In October 2004, the Maharashtra State Human Rights Commission began investigating the January 2003 killing of Bhimappa Koli, a reputed gangster. His family claims he was arrested and killed by police, the police contend he shot at them and was killed when they returned fire. An unnamed lawyer was quoted in the "Times of India" (August 29, 2005): "In most cases, the cops pick up the victims and plant (evidence) before shooting them in cold blood. The cops also demand money for their release. But there is no guarantee that you will not be shot even after you pay up."

Daya Nayak, "Encounter Specialist"

¶40. (SBU) Mumbai policeman Daya Nayak was an "encounter specialist" and the inspiration for characters in three movies, including "Ab Tak Chhappan" (which means "56 Killed Until Now") and the eponymous "Encounter Daya Nayak." The Bollywood film "Company" was dedicated to Nayak. His reputation and Bollywood clout were sufficient to yield Amitabh Bachchan (India's Sean Connery) as the chief guest for the opening of a school dedicated to Nayak's mother. Nayak's career reads like a supporting character in Suketu Mehta's book "Maximum City" about Mumbai's underworld and the police who live symbolically with it. From working in a restaurant, he joined the Mumbai police force in 1995; in a 2003 rediff.com interview after eight years on the force he boasted "I have done 83 encounters, I have arrested more than 300 criminals." Indian press reports suggest many if not most of the encounters were staged.

¶41. (SBU) Starting around that time, Indian press started investigating his alleged ties to Mumbai mobsters. In January 2006 he was suspended from the police force and the following month the Mumbai court issued a warrant for his arrest for having amassed "assets disproportionate to his known means of income" (i.e. corruption allegations) to the tune of four hundred times his annual police salary over a ten-year period. As former CBI Director Joginder Singh

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pointed out to journalists, Nayak's alleged extrajudicial executions are not under the legal microscope.

¶42. (SBU) In addition to Nayak, several other Mumbai encounter specialists have been suspended, but, again, for

corruption more often than for the killings. Vir Sanghvi in a column contrasted the ease of letting the encounter culture persist over spending the money needed to ensure that police are properly trained and equipped and courts are able to effect justice more swiftly

Human Rights Committee Guidelines Largely Ignored

¶43. (SBU) The National Human Rights Committee issued the following guidelines in 2005 to all the state governments to specifically address encounter killings; former CBI Chief Joginder Singh reports "they have hardly had any impact":

- All encounters should be probed properly and without bias.
- Any death caused in an encounter with any local police force or paramilitary force in peaceful areas would amount to culpable homicide, unless it is established that the action was taken in self defense. (NOTE: The reference to peaceful areas is likely meant to exempt legislatively-designated "disturbed areas" in J&K and the Northeast. End Note.)
- The probe report has to be submitted within six weeks.
- Investigation should be independent, police involved in the encounter should be kept out.

¶44. (SBU) Nair publicly laments that that NHRC "has not proved to be an effective body in combating extrajudicial killings" because it cannot move its recommendations into policy. Perpetrators are more likely to face an internal inquiry than a court trial (or for military officers a court martial.) The typical punishment for a police officer is a transfer to another jurisdiction with no change in rank or pay.

Social and Religious Factors Complicate the Picture

¶45. (SBU) Beyond the legal and political cover that security forces enjoy, social and religious factors grant more latitude regarding staged encounters. A uniform carries weight in Indian culture, and few civilians dealing face-to-face with a police or military officer will gainsay their directives or statements. This power dynamic is exacerbated when the victim is poor or of low caste, or a Muslim.

¶46. (SBU) Cremation is a common means to dispose of corpses in India. Religious traditions and, in some locales, a paucity of burial plots guarantees this method will continue, especially with unclaimed/unidentified corpses. This offers police a handy and non-suspect avenue to destroy evidence after a staged encounter. Punjab police in the 1980s-90s reportedly cremated hundreds if not thousands of encounter victims without notifying their families, according to

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several Punjab-based NGOs. The IHRR indicates that several encounter victims in the Northeast in recent years were cremated without prior family permission.

Evidence of Changing Attitudes

¶47. (SBU) It is encouraging to report that public attitudes regarding staged encounters appear to be changing. Inspector Pillai reflected that the image of the police dropped "down to zero" in large measure because of the common presumption that most reported encounters are staged. For example, PolFSN when asked for his assessment of the May 31 dawn attack on the hardline Hindu Rashtriya Swyamsewak Sangh (RSS) headquarters in Nagpur (Ref B) unambiguously told us he believed it to be a staged encounter crafted for the political gain of the RSS and the BJP.

¶48. (SBU) In a more tangible development, the CBI in May charged five Army officers with the March 2000 abduction and killing of five reportedly unarmed and innocent Kashmiris for having ostensibly massacred 35 Sikh villagers in Chittisinghpura, during President Clinton's visit to India (Ref C). The officers -- a Brigadier, a lieutenant colonel, two majors and a subedar (junior commissioned officer equivalent to a CW2) -- face multiple charges including fabricating evidence and witness statements, burying the bodies before they were examined, falsely displaying arms and ammunition as having been seized, and lying about what weapons the officers used in the engagement. The bodies of three of the five civilians were badly burned despite the officers' having reported they died of gunshot wounds, and none of the officers was injured in what they called a "major gun battle." The officers were all serving at the time in the Rashtriya Rifles (NOTE: Many encounter allegations in J&K name Rashtriya Rifles officers as the culprits. End Note.)

¶49. (SBU) According to Indian newspaper reports, evidence of the officers' crime began to emerge as early as April 2000, when relatives of the five purported terrorists began protesting against the J&K security forces, leading to police killing 10 during a demonstration that month. The case against the alleged assailants continued to crumble when the "link" person between Chittisinghpura and another terrorist attack was exonerated (November 2000) and a district government official publicly stated the five civilians were in fact innocent (April 2001). Despite these developments, it took the GOI six years before issuing even an announcement of pending charges against the soldiers. Sahni refers to the "Pathribal" encounter, where innocent civilians vice low-level terrorist thugs, are sacrificed so the security services can appear responsive, as a rare exception.

¶50. (SBU) In another example of cracking down on staged encounters, the Army on May 9 began the court-martial of Brigadier Suresh Rao for allegedly ordering his subordinates to fake terrorist kills to garner awards, citations, and positive public relations. One of Rao's subordinates, Colonel HS Kohli (no apparent relation to the above-mentioned Captain Sumit Kohli), was dishonorably discharged from the Army in November 2004 for having faked terrorist encounters in Assam in August 2003. His use of ketchup in staged photos

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of supposedly dead terrorists earned him the sobriquet "the Ketchup Colonel."

Comment

¶51. (SBU) In some respects encounter specialists represent the most egregious of police abuses. The corrupt gain personally, the violent criminal derives personal satisfaction, the perjurer perverts justice; the encounter man does all these, and is handsomely rewarded for his efforts. Respect for human rights is a mighty weapon -- perhaps one of the strongest -- in the war against terror. Without it, security forces and terrorists begin to appear indistinguishable from each other. If recent events indicate a new trend against staged encounters, we welcome it. We also must acknowledge, however, the massive cultural inertia that the Indian national and state security forces must overcome to make staged encounters a thing of the past.

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